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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/544,004	04/06/2000	Asgeir Saebo	CONLINCO-04284	7988

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EXAMINER
WANG, SHENGJUN

ART UNIT	PAPER NUMBER
1617	13

DATE MAILED: 05/13/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Applicati n N .	Applicant(s)	
	09/544,004	SAEBO ET AL.	
	Examin r	Art Unit	
	Shengjun Wang	1617	

-- The MAILING DATE of this communicati n appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *10 January 2002* .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-38* is/are pending in the application.

4a) Of the above claim(s) *6 and 20-23* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-5, 7-19 and 24-38* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Receipt of applicants' amendments and remarks submitted January 10, 2002 is acknowledged.

Claim Rejections 35 U.S.C. §102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 35, 37 and 38 are rejected under 35 U.S.C. 102(b) as being anticipated by Lievense (EP 0779033, IDS) for reasons set forth in the prior office action.

Claim Rejections 35 U.S.C. §103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1-5, 7-19 and 24-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over both Cook et al. (U.S. Patent 5,760,082, IDS) and Lievense et al. (U.S. patent 6,159,525) in view of Cain et al. (WO 97/18320, IDS) for reasons set forth in the prior office action.

Response to the Arguments

Applicants' amendments and remarks submitted January 10, 2002 have been fully considered, they are persuasive to over come the rejection under 35 U.S.C. 112, however, are not

persuasive regarding the rejection under 35 U.S.C. 102 and 103 set forth in the prior office rejection for reasons discussed below.

In response to applicants' assertion that Lievense et al. does not teach each and every limitation in claims 35, 37 and 38 herein, particularly, the limitation of volatile organic compounds (VOC), note Lievense et al. claims a edible composition containing CLA, no requirement of the presence of VOC. Therefore, before the claimed invention was made, others have already possessed the claimed invention.

Applicants' assertion that the claimed invention is not obvious over the cited prior art because the cited prior art do not teach every limitation is improper. Applicants' assertion is based on that the cited references do not expressly teach the limitation of "VOC" herein. Note the question under 35 U.S.C. 103 is not merely what reference expressly teach, but what they would have suggested to one of ordinary skill in the art at the time the invention was made; all disclosures of prior art, including unpreferred embodiments, must considered. In re Lamberti and Konort (CCPA), 192 USPQ 278. Here, the prior art does not require the presence of VOC in the composition, one of ordinary skill in the art would have reasonably been expected to exclude unnecessary VOC from a food product. As stated in the prior office action, since the prior art teach that the food products containing CLA do not have any sensory property caused by VOC, the amount of VOC is reasonably believed to be very low. The amount of VOC claimed herein is either within the scope of the prior art, or an obvious variation of the prior art. Note this is based on the fact that since the prior art teach that the food products containing CLA do not have any sensory property caused by VOC, not based on the examiner's own knowledge.

Applicants' rebottle argument that applicant solve the problem of preventing the oxidation of CLA into volatile compound is not persuasive. Particularly, the instant claims are draw to a composition. The specific intended function of each ingredients in the composition is not seen to be relevant. As stated in the prior office action, "the intended function of a component in a composition would not render any patentable weight to the composition."

Applicants' assertion that the cited prior art do not provide a reasonable expectation of success is in error. The prior art (Cain et al.) suggest that ascorbic acid may be used to prevent the oxidation of CLA. The detailed mechanism of antioxidation is not seen to change the fact the employment of ascorbic acid in CLA composition is obvious.

Nothing unobvious is seen in the claimed invention.

3. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shengjun Wang, Ph.D. whose telephone number is (703) 308-4554. The examiner can normally be reached on Monday-Friday from 8:30 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Minna Moezie, J.D., can be reached on (703) 308-4612. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Examiner

Shengjun Wang

April 26, 2002

RUSSELL TRAVERS
PRIMARY EXAMINER
GROUP 1200